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103

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/765,675 01/22/01 DOUIN

V 05725.0830

HM12/0816

EXAMINER

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ART UNIT

PAPER NUMBER

1619

DATE MAILED: 08/16/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No. 09/765,675 Examiner Gina C Yu	Applicant(s) DOUIN ET AL. Art Unit 1619	
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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 January 2001.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-83 is/are pending in the application.

 4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-83 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

 a) All b) Some * c) None of:

 1. Certified copies of the priority documents have been received.

 2. Certified copies of the priority documents have been received in Application No. _____.

 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

 a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1.

4) Interview Summary (PTO-413) Paper No(s). _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

(A) Claims 1-19, 21, 22, 30-62, and 68-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al. (EP 0842652 A1) in view of Ziegler et al. (U.S. Pat. No. 5,135,748).

Restle et al. teach an oil-in-water emulsion wherein the oil globules have size of less than 150nm, comprising an amphiphilic lipid phase containing at least one non-ionic amphiphilic lipid phase and at least one cationic amphiphilic lipid. See abstract. The amount of oil to the amount of amphiphilic lipid phase range from 2:1 to 10:1, which

meets claims 2 and 3. See p. 2, lines 3 – 33. The average size of the oil globules is disclosed in p. 7, line 52-54, which meets claim 4. The nonionic amphiphilic lipids and the use thereof as described by instant claims 17-19, 21 and 22 are disclosed in p. 2, line 34 – p. 3, line 37. The cationic amphiphilic lipids of instant claims 30-58 are disclosed in p. 3, line 38 – p. 7, line 1. The oil described in instant claims 59 – 62 are disclosed in p. 7, lines 2 – 23. The use of the emulsion in the form of lotion, serum or gel for therapeutic or non-therapeutic cosmetic purposes is disclosed in p. 7, line 54 – p. 8, line 30, which meets claims 68-83. The reference lacks the teaching of the cationic polymers of claims 5-16.

Ziegler et al. teach a cosmetic o/w composition comprising quaternary ammonium phosphate esters and 0.10-10% by weight of cationic polymers which meet the limitation of claims 5-16. See col. 2, lines 2 – 14; col. 2, line 17 – col. 6, line 11. The reference teaches the composition provides stability against phase separation during freeze-thaw cycles and is effective in moisture retention.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of Restle et al. by adding the cationic polymers, as taught by Ziegler et al., because of the expectation of successfully producing a cosmetic composition with enhanced stability and moisture retention.

(B) Claims 23-29 and 63 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al. and Ziegler et al. as applied to claims 1-19, 21, 22, 30-62, and 68-83 above, and further in view of Simonnet (EP 078114 A1).

Restle et al. and Ziegler et al. are discussed above. The combined references fail to teach the anionic amphiphilic lipids of instant claim 23 and the turbidity of the compositions.

Simonnet teaches a transparent oil-in-water emulsion for cosmetic use wherein the oil globules have a mean size of less than 100nm and at least one silicone surfactant. See p. 1, line 2 – 11. The use of up to 20% of ionic amphiphilic lipids, including anionic lipids, amphoteric ionic lipids are disclosed in p. 3, line 33 – p. col. 4, line 6, which meets claims 17 and 21 - 29. See also Examples. The reference also teaches that emulsions with particle size less than 100nm are transparent similar to water, and further teaches that when the particle size is 57nm the transparency of the composition is 67%, which in examiner's view meets instant claim 63. See p. 2, lines 9 – 11; p. 6, lines 25-6.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of the combined references by adding the anionic amphiphilic lipids as taught by Simonnet because of the expectation of successfully producing a transparent cosmetic emulsion composition with well known surfactants in the art.

(C) Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al., Ziegler et al., Simonnet as applied to claims 1-19, 21-63, and 68-83 above, and further in view of Matzik et al. (U.S. Pat. No. 5,716,418).

Restle et al., Ziegler et al., Simonnet are discussed above. The combined references fail to teach the anionic amphiphilic lipids of instant claim 20.

Matzik et al. teach hair coloring composition containing anionic surfactants including fatty alkyl ether citrates. See col. 1, line 50 – col. 2, line 38.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of the combined references by adding the anionic amphiphilic lipid as taught by Matzik et al. because of the expectation of successfully producing cosmetic composition with a known surfactants in the art.

(D) Claims 64-67 are rejected under 35 U.S.C. 103(a) as being unpatentable over Restle et al., Ziegler et al., Simonnet, and Matzik et al., as applied to claims 1-63 and 68-83 above, and further in view of Decoster et al. (Abstract, JP 10338899A).

Restle et al., Ziegler et al., Simonnet, and Matzik et al., are discussed above. The combined references fail to teach employing aminosilicone in the composition.

Decoster et al. teach cosmetic detergent composition comprising 0.05-5 weight % of aminosilicone along with anionic surfactant, amphoteric surfactants and cationic polymers. See abstract.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the composition of the combined references by adding the aminosilicone, as taught by Decoster et al., because of the expectation of successfully producing a cosmetic detergent composition.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Decoster (JP10338899).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gina C. Yu whose telephone number is 703-305-3593. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diana Dudash can be reached on 703-308-2328. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1234.

Gina C. Yu
Patent Examiner
August 11, 2001



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